

Waivers	First Name	Last Name	Claim Number
			W-16-0002
Amount	OGC Received Date	Assigned To	Assigned Date
\$10539.44	01/20/2016	Ann Sisson	01/20/2016
EPA Decision	EPA Decision Date	Amount Approved	Status
APPROVED	03/14/2016	\$10539.44	CLOSED
Appeal	Comments		
No			
Type			
New position - wrong step			

Attachments

From: Redden, Kenneth
Sent: Monday, March 14, 2016 9:43 AM
To: [REDACTED]
Cc: Sisson, Ann <Sisson.Ann@epa.gov>; Reese, Michael <Reese.Michael@epa.gov>; Saunders, Pam <Saunders.Pam@epa.gov>; Church, Stacey <Church.Stacey@epa.gov>
Subject: Waiver Decision

Dear [REDACTED]:

This email is in response to your February 9, 2016 letter requesting a waiver of repayment in the amount of \$10,548.44. For the reasons set forth herein, your request for waiver is approved in the amount of \$10,539.44.

Briefly stated, you accepted a [REDACTED] At that time, your salary was adjusted from a pay level of GS 13, Step 5 to a pay level of GS 14, Step 2. In August 2012, you requested re-assignment to your previous duty station for personal reasons, acknowledging that it was a voluntary downgrade. At that time, the Agency, through administrative error, set your salary at the GS-13, Step 7 level based upon pay retention rules, when it should have been set at a GS-13, Step 5 level because pay retention does not apply to reductions in pay when they are at an employee's request. This error occurred despite the fact that OCEFT's resource management office contacted one of OARM's resource specialists, at the time of the downgrade, to confirm the appropriate new step level. This error created overpayments totaling \$10,539.44* from February 2012 until March 2015, when it was detected by a system audit. Although you requested a waiver of repayment in May 2015, when you were first notified of the debt, your request was never forwarded to this office. Moreover,

you indicate that more than \$1,000.00 of your wages were garnished as a result.

Under 5 U.S.C. § 5584, I have the authority to waive collection of erroneous payments of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. Waiver is precluded if the employee is aware or should have been aware that he or she was being overpaid. B-271308, April 18, 1996. In the present case, I find that the erroneous payments were caused by Agency administrative error. Therefore, the only issue before me is whether you knew or should have known that you were receiving more pay than you were entitled to receive.

In this case, my review of the record indicates that you did not know that you were being overpaid. As set forth below, I further find that your reliance on the Agency to set the correct salary in this instance was reasonable. When an employee has been assigned to the wrong step within a grade upon a promotion, demotion, or the assumption of a new position, the Comptroller General has usually waived any resulting overpayments. B-211166, August 25, 1983. The reason for this is that most employees cannot reasonably be expected to know the details of the pay regulations governing personnel actions. Furthermore, these personnel actions are generally not accompanied by any pay records, pay regulations, and/or guidance which would, on their face, evidence assignment to the wrong step within a grade. Thus, under these circumstances, a waiver is warranted because the employee could not reasonably have been expected to know or suspect he or she was being overpaid. B-198760, April 27, 1981. In your case, even the resource specialists involved in processing your PCS personnel action were not aware of the proper pay establishment rules. Under the payroll regulations, your placement at a GS-13, Step 7 would have been appropriate had your grade reduction occurred at management's request. However, due to a regulatory exception, the same personnel action, when carried out at an employee's request, as it was here, does not have the same consequence. See 5 C.F.R. 536.102(b)(1). Based on these circumstances, I find that you could not have reasonably known that you were receiving more pay than you were entitled to receive. Accordingly, all the criteria for waiver of this claim have been met, and this request for waiver is approved in the amount of \$10,539.44. In this regard, OCFO should work with the Interior Business Center to waive repayment and to refund to you any money that was already paid by you toward this debt.

If you have any questions, please contact Ann Sisson of this office at

(202) 564-5469.

*The waiver amount requested in your February 9, 2016 letter overstated the amount of the debt by \$9.00.